

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURICE HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73500

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Maurice Howard appeals from a judgment of conviction entered pursuant to a jury verdict of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, Howard argues the district court erred by giving the flight instruction because the evidence did not demonstrate he fled with the consciousness of guilt. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Id.*

The evidence produced at trial demonstrated Howard engaged in a physical confrontation with his ex-girlfriend. Howard immediately left the apartment complex following the completion of the confrontation and was gone before the arrival of the police. Based on the evidence produced at trial, we conclude the district court did not abuse its discretion by concluding Howard fled with the consciousness of guilt and to avoid arrest, and then instructing the jury regarding flight. *See Rosky v. State*, 121 Nev.

184, 199, 111 P.3d 690, 699-700 (2005); *see also McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970) (“Where there is evidence . . . of flight as a deliberate attempt to avoid apprehension, a flight instruction is proper.”). Therefore, Howard is not entitled to relief.

Second, Howard argues the flight instruction utilized by the district court in this case was not an accurate statement of the law. This court applies a de novo standard of review to determine “whether a particular instruction . . . comprises a correct statement of the law.” *Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008). We conclude Howard’s claim lacks merit. The instruction here explained that flight, if proven, is circumstantial evidence of guilt, but the flight had to be done with the consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The instruction further provided it was for the jury to determine the weight to give the evidence of flight. Thus, we conclude the flight instruction given in this case was an accurate statement of the law. *See Maresca v. State*, 103 Nev. 669, 674, 748 P.2d 3, 6 (1987); *McGuire*, 86 Nev. at 266, 468 P.2d at 15. Therefore, Howard is not entitled to relief.

Third, Howard argues the district court improperly instructed the jury that the victim’s testimony did not need to be corroborated in order to constitute sufficient evidence of guilt if the jury believed that testimony beyond a reasonable doubt. Howard asserts such an instruction is more appropriately utilized in a sexual assault case and improperly gives more weight to the victim’s testimony. Howard did not object to this instruction. Thus, Howard is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). “In conducting plain error review, we must examine whether there was error,

whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

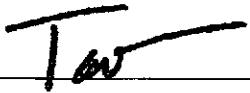
We conclude Howard fails to demonstrate the district court erred. Although this instruction is usually issued in sexual assault cases, the instruction was appropriate because there was a danger that "[j]urors [may] mistakenly assume that they cannot base their decision on one witness's testimony even if the testimony establishes every material element of the crime." See *Gaxiola v. State*, 121 Nev. 638, 650, 119 P.3d 1225, 1233 (2005) (holding that a district court did not err by giving a similar instruction in a sexual assault case). In addition, the instruction did not reduce the State's burden of proof because "[a] 'no corroboration' instruction does not tell the jury to give a victim's testimony greater weight, it simply informs the jury that corroboration is not required by law." See *id.* at 648, 119 P.3d at 1232. Therefore, we conclude Howard is not entitled to relief.


Fourth, Howard argues the district court erred by declining to instruct the jury with Howard's proposed credibility instruction. The district court denied Howard's request to instruct the jury regarding credibility with an instruction based upon a California model instruction. As stated previously, we review a district court's decisions when settling jury instructions for an abuse of discretion. *Crawford*, 121 Nev. at 748, 121 P.3d at 585. The credibility instruction utilized by the district court included many elements of Howard's proposed instruction and Howard has not identified any prejudice resulting from the omission of his instruction. We conclude Howard does not demonstrate the district court decision regarding the credibility instruction was arbitrary or capricious or exceeded

the bounds of law or reason, and accordingly, we find Howard does not demonstrate the district court abused its discretion in this regard. Therefore, we conclude Howard is not entitled to relief.

Having concluded Howard is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹In his reply brief, Howard argues the State failed to adequately respond to his claims in its answering brief and therefore conceded error. However, we conclude the State's response to Howard's claims were adequate for this court to appropriately review Howard's claims.